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A
DEFENCE
OF THE
NEW-ENGLAND
CHARTERS.

By *Jer. Dummer.*

*Pulchrum est Patriæ benefacere, etiam benedicere haud
absurdum est.* SALLUST.



B O S T O N :
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To the Right Honourable the
Lord *CARTERET*,
One of His MAJESTY'S Principal
Secretaries of State.

MY LORD,



Having lately had the Honour of presenting the humble Address of the Province of the *Massachusetts-Bay* to His Majesty for the Continuance of their Charter Privileges, which they apprehend in some Danger; it seem'd agreeable at the same Time, to explain the Right which the Charter Governments have to those Privileges. Nor could an Argument of this Nature be so properly address'd to any other Person as Your Lordship, who in your high Station, have all His Majesty's Colonies and Plantations within Your Province, and under Your immediate Care.

MY LORD, the Colonies I plead for, ask only Justice; yet if their Circumstances should require the Royal Grace, they humbly hope they have some Claim to it from their firm and exemplary Loyalty, For it
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D E D I C A T I O N

may be said to their Honour, that it is not known there is a single Person in all the Charter Governments, whatever there may be in the rest, who is not zealously devoted to His present Majesty, and to the Succession in His illustrious Family.

It would be, my LORD, a rash and ill-judg'd Attempt in me, to enter here into Your Lordship's Character, as the Manner of Dedicators is ; I shall not therefore presume to mention those great Abilities which have distinguish'd Your Lordship in foreign Courts as well as our own ; but only beg Leave to express my Thanks for that amiable Goodness, so conspicuous in Your Lordship, which softens the Brow of the Minister, and makes our Access easy, when publick Business calls us to attend Your Lordship.

MAY You long continue an Ornament and Support to His Majesty's Councils.

I am,

With profound Esteem and Respect,

MY LORD,

Your LORDSHIP'S

most Obedient and

Devoted Servant,

Jer. Dummer.



A
D E F E N C E
O F T H E
New-England CHARTERS.



THE general Name of NEW-ENGLAND, includes in its common Acceptation the Province of the *Massachusetts-Bay*, the Colony of *Connecticut*, the Government of *Rhode-Island*, with *Providence Plantations*, and the Province of *New-Hampshire*. The three former are Charter Governments: The last, *viz. New-Hampshire*, never had any peculiar Privileges, but is under the immediate and absolute Direction of the Crown. The *Massachusetts*, as it is the first of all the Colonies in Extent of Territory and Number of Inhabitants, was the first incorporated, having obtain'd their Charter from King CHARLES the First, in the Fourth Year of his Reign. The Colony of *Connecticut* receiv'd theirs from King CHARLES the Second, in 1662, and the Fourteenth Year of his Reign. The Government of *Rhode-Island* had theirs in the Year following. These Charters agreed in all the main Points, confirming to the Patentees their Title to the Soil, and giving them ample Privileges for the well ordering and governing

ing the respective Plantations : They had Power to make a common Seal ; to plead and be impleaded ; to call General Assemblies ; to make Laws, so as they were not repugnant to the Laws of *England* ; to assels the Freemen ; to constitute all Civil Officers ; to array the Inhabitants in warlike Posture, and use the Martial Law, when Occasion requir'd. And it was provided further, That in case any Doubts should arise, the Charters should have the most favourable Construction for the Benefit of the several Corporations.

INVITED and encourag'd by these Advantages, a considerable Number of Persons dissenting from the *Discipline* of the Establish'd Church, tho' agreeing with it in *Doctrine*, remov'd into those Remote Regions, upon no other View than to enjoy the Liberty of their Consciences without Hazard to themselves, or Offence to others. Thus the Colonies went on increasing and flourishing, in spite of all Difficulties, till the Year 1684, when the City of *London* lost its Charter, and most of the other Corporations in *England*, influenced by fear of Flattery, complimented King CHARLES with a Surrender of theirs. In this general Ruin of Charters at Home, it could not be expected that those in *America* should escape. It was then that a *Quo Warranto* was issu'd against the Governour and Company of the *Massachusetts-Bay*, and soon after a Judgment was given against them in *Westminster Hall*. At the same Time Sir Edmund Andross, then the King's Governour of *New-England*, did by Order from Court repair to *Hartford*, the Capital of *Connecticut*, with arm'd Attendants, and forcibly seiz'd their Charter for the King. *Rhode-Island*, finding there was no Remedy to be had, made a Vertue of Necessity, and peaceably resign'd theirs. But as soon as the News arriv'd of the happy *Revolution* in *England*, these two last mention'd Governments re-assum'd their Charters, and put themselves under the old Form of Administration, in which they have continu'd ever since. The Government of the *Massachusetts*, cautious of offending their Superiours at Home, and considering there was a Judgment against them in the Court of *Chancery*, tho' most unfairly and illegally obtain'd, did not think it adviseable to make this Step ; but sent Agents to Court to supplicate, in a humble Manner the Restoration of their Charter. To what Mismanagement, or other Cause it was owing,

owing, that they did not obtain it, and that this Loyal Corporation was the only one either in *Old* or *New-England*, that did not recover its lost Liberty under our late Glorious Deliverer King WILLIAM, 'tis now too late, and therefore to no Purpose, to enquire. A new Charter was order'd which the Province now has, and is not much more than the Shadow of the old One. For by these new Letters Patents, the Appointment of a Governour, Lieutenant-Governour, Secretary, and all the Officers of the Admiralty, is vested in the Crown. The Power of the Militia is wholly in the Hands of His Majesty's Governour, as Captain-General. All Judges, Justices, and Sheriffs, to whom the Execution of the Laws is intrusted, are nominated by the Governour, with the Advice of His Majesty's Council. The Governour has a Negative upon the Choice of Councillors, which is both *peremptory* and *unlimited*: He is neither oblig'd to render a Reason, nor restrain'd to any Number. All Laws enacted by the General Assembly are to be sent Home for the Royal Approbation or Disallowance. There is, besides, one very comprehensive Article inserted in this Charter, that no Laws, Ordinances, Elections, or Acts of Government whatsoever, shall be of any Validity, without the Consent of the King's Governour signify'd in Writing.

By these Reservations, the Prerogative of the Crown, and the Dependence of the Province thereon are in the most effectual Manner secur'd, if there had been any Danger before, as I hope in the Sequel of this Discourse, to demonstrate there was not. And yet it happens unaccountably that this Charter of King WILLIAM, so limited and restrained, is as obnoxious as either of the other which have their full and entire Force. Accordingly when about six Years since a Bill was brought into the House of Commons, and twice read, for regulating the Charter and Proprietary Governments, this was one among the rest, and the first nam'd in the Bill. And tho' the Honourable House thought fit, upon hearing the Petitions presented to them on that Occasion, to drop their Proceedings, there is Reason to believe they may at another time resume them. It is in this View, that I have put together my Thoughts on the Subject, which for Methods sake I have dispos'd under the following Heads.

- I. I shall endeavour to show, that the Charter Governments have a good and undoubted Right to their respective Charters.
- II. That they have not forfeited them by any Misgovernment or Male Administration.
- III. That if they had, it would not be the Interest of the Crown to accept the Forfeitures. And,
- IV. I shall make some Observations upon the extraordinary Method of Proceeding against the Charters by a Bill in Parliament.

1st. Proposition, *That the Charter Governments have a good and undoubted Right to their respective Charters.*

As to the first Point there can be no Difficulty. The Charters were Granted by the Crown, and the King is acknowledg'd to be the Head and Fountain of all Corporations and Franchises.

For tho' my Lord *Coke* takes notice, That a Body Politick may be establish'd by Prescription, yet such Prescription is only valid upon a Presumption that there was an ancient Grant of the Crown, which by the Injury of Time was afterwards lost. I need not insist upon what no Body controverts; but it is material to observe, that the *American* Charters are of a higher Nature, and stand on a better Foot, than the Corporations in *England*. For these latter were granted upon Improvements already made, and therefore were Acts of mere Grace and Favour in the Crown; whereas the former were given as Præmiums for Services to be perform'd, and therefore are to be consider'd as Grants upon a *valuable Consideration*; which adds Weight and Strength to the Title.

To increase the Nation's Commerce and enlarge her Dominions, must be allow'd a Work of no little Merit, if we consider the Hardships to which the Adventurers were expos'd; or the Expence in making their Settlements; or lastly, the great Advantages thence accruing to the Crown and Nation. It would be an endless Task to recount all the Disappointments and Disasters that beset the first Planters in these Enterprizes. I shall therefore only say in General, that after many Dangers in their Voyages over the *Atlantick*, which was not such an easy Navigation a hundred Years ago as it is now, they

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they arriv'd at an Inhospitable Shore and a waste Wilderness, where there were few of the Necessaries, and not one Accommodation of Life ; where the Climate was so extreme, the Summer heats so scorching, and the Winters so long and so cold, that the Country seem'd scarcely habitable ; and to sum up their Misfortunes, they found themselves inevitably engag'd in a War with the Natives. So that by Fatigue and Famine, by the Extremity of the Seasons, and by a War with the Savages, the first Planters soon found their Graves, leaving the young Settlements to be perfected by their Survivors.

To omit all this, I shall only be particular in the Expence, which was above 200,000 *l.* in settling the single Province of the *Massachusetts-Bay*. The Account stands thus : The Freight of the Passengers cost 95000 *l.* The Transportation of their first Stock of Cattle came to 12000 *l.* The Provisions laid in for Subsistence, till by Tillage more could be rais'd, cost 45000 *l.* The Materials for Building their first little Cottages came to 18000 *l.* Their Arms and Ammunition cost 22000 *l.* The several Articles amount to 192000 *l.* not taking in to the Account the very great Sums which were expended in Things of private Use, that People could not be without, who were going to possess an uninhabited Land. I must add, that 192 Ships were employ'd in making this great Plantation, and twelve Years were spent before it was brought to any tolerable Degree of Perfection.

As great, however, as this Expence was, I believe it will appear that the Settlement of *New-England* was not more chargeable to the Adventurers, than it has been in its Consequence profitable to *Great-Britain*. There is no sort of *British* Manufacture, but what the Subjects there demand in a greater or less Proportion, as they have Ability to pay for it ; every Thing for the Use, Convenience, Ornament, and (I say it with regret) for the Luxury and Pride of Life. Some of the oldest and most experienc'd Traders to those Parts have by Computation made these Exports arise to the Value of 300000 *l.* per Annum. The Imports from thence are equally beneficial to the Kingdom. They brought home Bullion as long as they had any left ; and now they are so exhausted they can no longer send it directly,

they continue to remit it by the Way of *Spain, Portugal* and the *Straits*; It is there they sell their Fish, and the Produce of it comes hither in Gold and Silver, or Bills of Exchange, which is the same thing.

OTHER and better Returns than Money it self they make in *Masts*, the fairest and largest in the whole World, besides *Pitch, Tar, Turpentine, Rosin, Plank, Knees* for Ships, and other Species of Timber for various Uses. These, especially *Pitch and Tar*, were formerly purchas'd of the *Swede* with Crown Pieces at intollerable Prices; but since the Encouragement given for their Importation from *New-England*, they have fallen to half the Value. It is to be farther consider'd, that what we take of these Commodities from our own Plantations, is brought Home in our own Ships, and paid for with our Manufactures.

New-England also imports Logwood for the dying our Woollen Goods, in Quantities sufficient for our own Use, and a Surplus with which we furnish *Holland, Hambro'*, and other Markets in *Europe*. It is wholly owing to the Industry of the People of *New-England*, that this useful Commodity is reduc'd from 30 and 40 *l. per Tun*, which we us'd to pay for it to the *Spaniard*, to 12 *l. per Tun*, which is the present Price, and out of this 12 *l.* there is 4 *l. 5 s.* paid to the Crown for Custom.

OTHER Articles might be mention'd, as *Whale-Oil* and *Filans*, which are yearly imported from *New-England* in no contemptible Quantities. They are useful in several Manufactures; and if not had from thence must have been purchas'd of the *Dutch* with ready Money and at excessive Prices.

'Tis true, *New-England* makes no Sugar, but it assists the Islands there do; without which Assistance they could not make it, at least not cheap enough, and in sufficient Quantities to answer the Markets in *Europe*. For if the Sugar Islands were obliged to sow *Wheat*, and plant as much *Indian Corn* as they wanted, they must needs plant the fewer Canes, and by Consequence make the less Sugar. From thence they are also supply'd with Horses for their Mills, Timber for their

their Sugar Works, Staves for their Casks, and what is more considerable, with Barrel Pork, Mackrel, and refuse Cod-Fish for their Negroes, without which their Labour would yield nothing to their Owners. For were they to feed their Slaves with Beef and other Provisions from *Britain* and *Ireland*, the Expence of a Plantation would devour the whole Produce of it. There are now such great Quantities of Sugar made in the *French* and *Dutch* Plantations, and so much imported from *Brasil* by the *Portuguese*, that our Sugar Islands need all Advantages to make this Commodity cheap and in Plenty, that we may be able to out-do, or at least equal our Neighbours in the foreign Markets,

It may be added, that *New-England* is a good Nursery of Seamen for the Navy. I believe I may affirm, that there was hardly a Ship, during the last War, in the Royal Navy without some of *their* Sailors on Board, which so distress'd the *New-England* Merchants, that they were oblig'd to man their Ships with *Indians* and Negroes.

WHAT I have said amounts to this : That *New-England* receiv'd her Charters on this express Condition, of settling Colonies for the Benefit of the Crown :

THAT she was oblig'd to Expence, and through incredible Difficulties accomplish'd the Work, even beyond what was ever hop'd or expected.

And then the Conclusion, that I would draw from these Premises is this : That to strip the Country of their Charters after the Service has been so successfully perform'd, is abhorrent to all Reason, Equity and Justice.

BUT it is urg'd, That the Crown does not at all lose the Soil, though it does the Charters ; which indeed is true, but it is not the Crown's Soil. The Crown, strictly speaking, neither did nor does, and has no Right in it self. Queen Elizabeth gave out the first Patent to Sir *Walter Raleigh* in 1584 : and if she had any Right, what was it, and whence deriv'd ? It was not a Right of Conquest, because those Countries did not fall into her from that Source. Not of Conquest, because she neither conquer'd, nor attempted to conquer them. Besides, it would be pretty hard to conceive how a

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Conquest, where there was no preceeding Injury or Provocation, could create a Right. Nor did it arise by *Purchase*, there being no Money or other valuable Consideration paid. Nor could she claim by the *prior Discovery or Pre-occupancy*, as the Civilians speak, because that gives a Right only to *derelict Lands*, which these were not, being full of Inhabitants, who undoubtedly had as good a Title to their own Country, as the *Europeans* have to theirs. And sure no Body will say in plain Terms, that we have any Claim upon the Foot that we were *Christians*, and they *Heathen*; which yet I know some Persons of no obscure Fame have tacitly suggested. *Rome* it self, as imperious as she is, never carry'd her Pretences to this Height: For though some of her Doctors have taught, absurdly enough, that *Dominion* is founded in Grace, none of 'em ever said that *Property* was. There remains then no other Right than what was deriv'd from the native Lords of the Soil, and that is what the honest *New-England* Planters rely on, having purchas'd it with their Money. The *Indian Title* therefore, as it is decry'd and undervalu'd here, seems the only fair and just one; and neither *Queen ELISABETH* by *her* Patents, or *King JAMES* by *his* afterwards, could give any more than a bare *Right of Pre-emption*.

AND yet admitting that the Crown granted the Soil, to how little must the Value of such Grants amount, all Circumstances consider'd? The Patentees were not only oblig'd to travel a thousand Leagues beyond Sea, but to purchase their Grants over again of the Natives, before they could be put into Possession. The Land it self was of a rough Savage Nature, incumber'd with unprofitable Woods, and of no Use 'till by vast Labour and Expence subdu'd and cultivated. For to speak the Truth, those Parts were but *bare Creation* to the first Planters, and their Labour *like the Beginning the World*.

So that which Way soever we take it, I think it's plain, if the Crown resumes the Charters, it will take away the Whole it gave, and deprive the Patentees of the only Recompence they were to have for all their 'Toils and Fatigues, which they thought to have conveyed safe to their Posterity. Could they have imagin'd this, could they have foreseen that their Privileges were such *transitory Things*, as to
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last no longer than their Work should be done, and their Settlements compleated, they had never engag'd in so hazardous and difficult an Enterprize. They would never have parted from their native Land, being neither Criminals nor Necessitous ; and those Countries which have since added so much to the Wealth and Greatness of the Crown, might have been a barren Wilderness to this Day ; or what is worse, and more probable, might have been fill'd with *French Colonies*, whereby *France* would have reign'd sole Mistress of *North America*.

I believe it will be generally allow'd, that my Argument is thus far right, if I can make good my second Proposition, *Viz.*

THAT these Governments have by no Misbehaviour forfeited back their Charters to the Crown.

2d Proposition. *That these Governments have by no Misbehaviour forfeited their Charters.*

SOME of the ablest Common Lawyers that *England* could ever boast of, have maintain'd that a Corporation, being an *Ens Rationis*, is in its Nature indissolvable, and that therefore no Abuse of its Franchises can effect it in Point of Forfeiture, or determine its Being. If this Argument should be thought too subtle and metaphysical, I hope however it will be allow'd an Extreme on the other Side, that a Corporation should be threatned for every Offence to be seiz'd into the King's Hands. The Subjects Abroad claim the Privilege of *Magna Charta*, which says, that no Man shall be fin'd above the Nature of his Offence, and whatever his Miscarriage be, a *Salvo Contentamento suo* is to be observed by the Judge. If therefore they have committed Faults, let them be chastis'd, not dissolv'd ; let not their Corporations be dissolved for any other Cause than a Failure of their Allegiance. But I need not go into this or any other nice Point of Law, it being sufficient to know that the *Charter Governments* are clear of the several Facts which have been objected against them, and assign'd as Matter of Forfeiture. In the Bill that was brought into the House of Commons, there were two Allegations against the Charter and Proprietary Governments, which I shall answer, and then go on to consider such other Complaints as I have met with from Time to Time against these Governments.

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The 1st Charge against the Charter Governments, that they have neglected the Defence of the Inhabitants, answered.

THE first Charge in the Bill against the Charter Governments is, that they have neglected the Defence of the Inhabitants. This I must own, if true, and such Neglect was voluntary, while they had the Means and Power of Defence in their Hands, was a high and treasonable Breach of their Trust, and would be the strongest Argument that could be brought for a Resumption of the Charters. But now if I should prove that these Governments, especially the *Massachusetts* and *Connecticut*, have in all past Times defended the Inhabitants both by Sea and Land, as well against the *French* as *Indian* Enemy : If I shall prove that they have all the late War protected one of the *King's* Provinces lying on their Confines, which would otherwise inevitably have been lost ; and that another of those Provinces took no Part in the War, but maintain'd a shameful Neutrality with the Enemy, whereby the whole Weight of the War fell on the *Massachusetts* ; If I shall prove that they have frequently carry'd offensive Arms into the *French* Territories, and made one important Conquest, since annex'd to the *British* Crown ; and that all this was done at their own vast Expence ; then, I hope, *New-England* will stand fairly acquitted of this suppos'd Crime of neglecting to Defend the Inhabitants, and be allow'd not only irreprehensible in this respect, but to have highly merited of the Crown and Nation.

THESE FACTS are so certain and so well known, that I'm perswaded this had never been assign'd as a Reason for dissolving the Charters, but with a special View to *Carolina*, which, when this Bill was brought into the House, was reduc'd to extremity by a War with the *Spanish* Indians ; and being neither able to defend themselves, nor obtain Succours from the Lord's Proprietary, address'd the Crown to take them under its Protection. It was therefore natural enough to mention this in the Bill ; that with humble Submission, it being the single Case of one Proprietary Colony, it should in all Reason have been restrain'd to that, and not extended to the Charter Provinces, which are neither alike constituted, nor were in the same Distress. For *New-England*, as I shall presently show, has defended itself from

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the first Beginning to this Day without being burdensome to the Crown, though not without great Struggles and Difficulties.

'TIS TRUE, they did not commence Hostilities, nor even take up Arms of Defence, till they found by Experience that no other Means would prevail. The first Planters, far from using the barbarous Methods practis'd by the *Spaniards* on the *Southern* Continent, which have made them detestable to the whole Christian World, sought to gain the Natives by strict Justice in their Dealings with them, as well as by all the Endearments of Kindness and Humanity. To lay an early Foundation for a firm and lasting Friendship, they assur'd the *Americans*, that they did not come among them as Invaders but Purchasers, and therefore call'd an Assembly of them together to enquire who had the right to dispose of their Lands; and being told it was their *Sachems* or Princes, they thereupon agreed with them for what Districts they bought, publickly and in open Market. If they did not pay a great Price for their Purchases, yet they paid as much as they were worth. For it must be consider'd, that Land was of little Use to the Natives, and therefore but of little Value. They liv'd chiefly on Fish and Fowl, and Hunting, because they would not be at the Pains to clear and break up the Ground. And as for their Meadows and Marshes, they were of no Use at all, for want of neat Cattle to feed them, of which there were none in those Parts of the World.

THE *English* had no sooner made some necessary Provision for themselves, than they apply'd their Cares for the Benefit of the *Indians*, by endeavouring to bring them from their wild manner of Life to the civil and polite Customs of *Europe*. For this purpose, they mark'd out Land to build *Indian* Towns, supply'd them with all proper Utensils for Building, prescribed to them Forms of Government, and above all, omitted no Pains to bring them acquainted with the Gospel. After some Time, when it was found necessary, the Colony made a Law to forbid any Person's purchasing Land of the *Indians* without the Approbation of the General Court, to prevent their being over-reach'd or ill us'd in their private Bargains; and some Land, lying very convenient for them, was by another Law made inalienable

inalienable, and never to be purchas'd out of their Hands, than which nothing could more demonstrate the Colony's Care and Concern for the Natives.

I thought my self oblig'd to make this Preface to the main Argument, that I might wipe off an unworthy Asperſion that has been caſt on the firſt Settlers of *New-England*, that they never treated the Savages well, but encroach'd on their Land by Degrees, till they fraudently and forcibly turn'd them out of all. It was far otherwiſe, as I have ſhown; yet nothing could oblige the *Indians* to Peace and Friendſhip. They were alarm'd with the ſtrong Jealouſies of the growing Power of the *Engliſh*, and therefore began a War with a Reſolution to extirpate them, before they had too well eſtabliſh'd themſelves. Yet as terrible as this Proſpect was to two or three young Colonies, who had work enough to defend themſelves againſt Famine, which in a cold barren Country, ſurrounded with Enemies, ſtar'd them in the Face, they nevertheleſs made no Application to the Crown for Aſſiſtance, but drew up Articles of Confederacy among themſelves, by the Name of the *United Colonies of New-England*, for their mutual Defence. This done, they took the Number of all the Males in the ſeveral Plantations, and raiſing a Poll Tax according to each Perſons reſpective Ability, they with one Conſent laid aſide their Ploughſhares and Pruning Hooks for the Sword and the Spear, and under the Command of Major-Generals, whom they choſe after the manner then in *England*, march'd directly to the Enemy's Head Quarters, and ſtrongeſt Fortifications, from whence they drove them with great Precipitation. Nor did they ſtop there, but purſu'd them through all their Recesses, 'till they oblig'd them to enter into a ſolemn Treaty of Peace. Such however was the perfidious Nature of the *American* Savages, that they ſoon renew'd the Hoſtilities, tho' to their own fatal Coſt. For if the *Engliſh* experienc'd a Variety of Fortune, as could not but be expected in the Viciffitudes of War, yet they were for the moſt part Victorious, and in the Courſe of ſome Years, after many terrible Slaughters of the Enemy, ſubdu'd and utterly extirpated Seven or Eight fierce and populous Nations.

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I am sensible some have endeavour'd to depreciate these Conquests, as gain'd over a rude barbarous People unexercis'd to Arms ; which if granted, still it can't be said, that *the Defence of the Inhabitants was neglected* ; and therefore the Charter Governments can fall under no Censure, if they should be thought to have merited no Praise. But if it be consider'd, that the *New-England* Forces contended with Enemies bloody in their Nature and superiour in Number ; that they attack'd them in deep Morasses, defended with Fortifications sufficiently strong, tho' not regular ; and that the Assailants were not provided with Cannon, nor could approach by Trenches, but advanc'd on level Ground : And if to this be added the vast Fatigues of their Campaigns, where Officers and Soldiers lay on the Snow without any Shelter over their Heads in the most rigorous Winters ; I say, if a just Consideration be had of these Things, Envy it self must acknowledge that their Enterprizes were hardy, and their Successes glorious. And tho' the brave Commanders who led on these Troops, and most of them died in the Bed of Honour, must not shine in the *British Annals*, yet their Memory ought to be sacred in their own Country, and there at least be transmitted to the latest Posterity:

THE inland Parts being now at rest, the War was remov'd to the Frontiers, which were cruelly harass'd by other *Indian Tribes*, animated and assisted by the *French of Canada*, who have given the *Massachusetts* but few Intervals of Peace, and those very short ones from that Time to this Day. All this while THAT Government was never wanting to protect the King's Subjects within their Jurisdiction, even to the remotest Parts of it. They kept Troops on foot, no less than Six or Seven Hundred at a Time, to cover the Barrier Line, and built Forts wherever they were necessary ; one of them nam'd *William Henry*, but commonly call'd *Pemaquid Fort*, because built on a River of that Name, was in the Heart of the Enemy's Country, and deserves a particular Description. It was built of Stone in a quadrangular Figure, 737 Foot in Circumference, without the outer Wall, and 108 Foot square within the inner ones. It had 28 Ports, and 18 Guns mounted, 6 being 18 Pounders. The Wall on the South Line fronting to the Sea was 22 Foot high, and above 6 Foot thick at the Ports, which were 8 Foot from the Ground.

The round Tower at the West End of this Line, was 29 Foot high : The Wall on the East Line was 12 Foot high, on the North 10, and on the West 18. It stood 20 Rod from High-Water Mark, and was Garrison'd with 60 and sometimes 100 Men. The Expence in building and maintaining this Garrison was considerable, yet the Province chearfully submitted to it ; nor did they decline rebuilding it, after it was surpriz'd and demolish'd by the *French*, for any other reason, but that it was found by Experience, the Enemy could come many Miles wide of it, and attack their Frontiers. They therefore built Forts at *Saco* and *Casco*, and other Places most expos'd which answer'd the same End.

By this Care the Power of the Enemy was very much broke, and the King's Province of *New-Hampshire* from whence the Royal Navy is annually supply'd with Masts, has been preserv'd, which otherwise must have unavoidably been lost, being unable to help it self, and receiving no Succours from Home. *New-York*, another of the King's Provinces, has always kept it self in a State of Neutrality, contributing nothing to the common Safety, whilst the *Canada Indians* join'd by Parties of the *French*, us'd to make their Route by their Borders without molesting them, and fall upon the Out Towns of the *Massachusetts*. This Behaviour was the more unpardonable in that Government, because they have 400 regular Troops maintain'd among them at the King's Charge, and have the five Nations of the *Iroquise* on their Confines, who are entirely dependant on them, and might easily, had they been engag'd in the common Cause, at all Times have intercepted the Enemy in their Marches, and thereby have prevented the Depredations committed on his Majesty's Subjects. Solemn and repeated Applications were made to the Government of *New-York*, by the Governours of the *Massachusetts*, *Connecticut*, and *Rhode Island*, in joint Letters on this Subject, but in vain. The Answer was they could not think it proper to engage their *Indians* in an actual War, lest they should endanger their own Frontiers, and bring upon themselves an Expence which they were in no Condition to provide for. And thus the poor Charter Colonies were left to bear the whole Burden, and do all the Work themselves.

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THE Province of the *Massachusetts-Bay* has been equally sollicitous to protect their Inhabitants by Sea, against any foreign Invasion. For this End they have kept their Militia well train'd and disciplin'd, and by an Act of Assembly oblig'd all Persons, under proper Penalties, to be well provided with Ammunition and Arms, that they might be ready in case of a sudden Descent from Abroad. *Boston*, which is their Capital Town, and principal Sea-Port, is fortify'd with two Batteries to the Sea, one at each End of the Town; and about a League from it, at the Entrance of the Harbour, there is a strong beautiful Castle, which is by far the finest Piece of military Architecture in the *British America*. It was built by Colonel *Romer*, a famous *German Engineer*, at the Country's Expence, and is call'd *Castle William*. It is a *Quarre* surrounded with a cover'd Way, and join'd with two Lines of Communication from the main Battery, as also a Line of Communication from the main Gate to the Redoubt, which is to prevent the Landing. It is well situated near the Channel, to hinder Ships from coming up to the Town, which must all come within Pistol-shot of this Battery. It is mounted with an Hundred Pieces of Cannon, several of which are plac'd on a Platform near high-water Mark, so as to rake a Ship fore and aft, before she can bring her Broad-sides to bear against the Castle, and some of these Cannon carry forty two Pounders. In Peace there is an independant Company of fifty or an hundred Men, I'm not certain which, that constantly are on Duty; but in Time of War five hundred able Men are exempted from all other military Duty, to attend the Service of the Castle at an Hour's Warning, upon any Signal given of the Approach of an Enemy. To prevent the Castle's being surpriz'd, there is a Light-House built on a Rock appearing above Water, two Leagues from the Town, which makes a Signal to the Castle of the Appearance of any Ships and their Number. The Castle again warns the Town, and if there be five Ships or more in Time of War, an Alarm is given to all the adjacent Countries by firing a Beacon. The Province has also a Galley or Frigate well man'd in Time of War, to guard the Coast from Privateers, and to convoy their Home Trade. In short, nothing that could be done for the Defence of the Subject by Sea or Land, has been left undone. It is really astonishing to consider, and difficult to believe, that these

little Governments should be able by their own Strength, and at their own Charge, to perform such great Things.

AND YET this is not all that must be said in their Defence. For as I have before observ'd, they have discover'd a noble Zeal to enlarge the *British* Empire, by undertaking several chargeable Expeditions against the strongest *French* Settlements in *America*. In the Year 1690 they made an Armament against *Port-Royal*, which was a Nest of Privateers, and a *Dunkirk* to the *American* Trade; besides that it was the Head Quarter, from whence Parties of *French* and *Indians* issued out, and fell upon the eastern Parts of *New-England*. They made themselves Masters of the Place with all the Country of *Accadie*, and Sir *William Phipps* who commanded in chief, administer'd to the Inhabitants an Oath of Allegiance to the Crown of *England*; in which State that Country remain'd 'till the Peace of *Ryswick*, when it was deliver'd up to the *French*. The great Service done the Crown by this Acquisition, is now too well known to need being particularly mention'd.

THE *New-Englanders* being willing to pursue this good Success, made an Attempt against *Canada* the same Year, with a Fleet of thirty two Sail of Vessels, besides Tenders, having on Board two thousand Men, whilst at the same Time a little Army of a thousand *English* and fifteen hundred *Indians*, were to march by Land and attack *Mont-Real*. 'Tis true, they fatally miscarry'd, (and who can answer for the Fortune of War?) But this ought not to lessen the Merit of an Enterprize, which they so well intended, and by which they so greatly suffer'd. It cost an hundred and fifty thousand Pounds in Money, and what was infinitely more valuable, the Lives of a thousand Men. Nor were these Vagrants, such as are pickt up here in the Streets, and disorderly Houses, and thence press'd into the War, but Heads of Families, Artificers, and robust young Men, such as no Country can spare, and least of all new Settlements, where Labour is the dearest Thing in the World, because nothing so much wanted as Hands. They did not indeed fall by the Sword of the Enemy, if that could alleviate their Misfortune, but by a Camp Fever, by Famine, and various Disasters in their Return Home, occasion'd chiefly by the early Approach of a severe Winter, which made it impracticable for Provisions to follow them.

GREAT,

GREAT was the Distress to which these poor Colonies were reduc'd by this expensive and improsperous Expedition ; yet by the wise Conduct of the Governments, and the Industry of the People, they so well recover'd themselves in less than twenty Years, as to resolve upon making another Visit to their *French* Neighbours, whom they saw daily growing in Power, and threatening in Time to destroy all the *English* Settlements. But not thinking themselves strong enough to deal with *Quebeck*, they were content to make only an Attempt on *Port-Royal*, which was done accordingly, tho' not with the former Success, the *French* Fort being now strong and regular, and well provided for a Defence or Siege.

NOT discourag'd by this Repetition of Misfortunes, when the late Queen signify'd to these Governments, her royal Intention to reduce *Canada*, and requir'd them to provide their Quota of Troops ; It can't be imagin'd with what Alacrity they came into it, and made in all Respects ample Provision for it. And tho' the Court altering their Measures did not see meet at that Time to proceed in the Design, yet the Colonies were put to near the same Charge as if they had.

THE next Year they rais'd a Body of Troops again, which commanded by Colonel *Nicholson*, with five hundred Auxiliaries from hence, made another Descent upon *Port-Royal* and reduc'd it. For which Service they were promis'd by her then Majesty, considerable Advantages in respect of Trade and the Fishery, to which it's hop'd a just Regard will be had, when *Nova Scotia* is brought under a civil Establishment.

ONE may imagine now that these Colonies were quite out of Breath, and needed a little Rest. Yet presently after, when the great unfortunate Expedition was set on Foot against *Canada*, under the command of General *Hill* and Admiral *Walker*, they furnish'd more than the Quota assign'd them, and provided all Necessaries for the *British* Troops in so short a Time, that if they had not been animated by an extraordinary Zeal, would not have been possible. And notwithstanding some People found it necessary to blame *New-England*,

land, the better to excuse themselves, yet it has been acknowledg'd to me by *English* Gentlemen, who were then on the Spot, and well experienc'd in these Affairs, that such a Fleet and Army wanting the Necessaries they did, could not have been dispatch'd on so short Warning from any Port in *England*.

MY Answer to this Article of Accusation would be imperfect, if I did not still further observe, that these Governments have assisted and reliev'd the most distant of His Majesty's Islands, and the remotest Settlements on the Continent, when in Distress, upon no other Inducement, than that of being their Fellow Subjects. I'll give two or three Examples.

WHEN in the Year 1703, or about that Time, *Jamaica* was in Fear of an Invasion, and desir'd some Help from the Government of the *Massachusetts*; They, notwithstanding the length of the Voyage, which is often 8 or 9 Weeks, sent them two Companies of Foot, commanded by Colonel *Walton* and Captain *Larimore*, both very gallant Officers. The Companies arriv'd safe, and serv'd there two Years, sometimes on Shore, and at other Times as Marines on Board the Men of War, then in the Service of the Island; and I believe very few of these Soldiers ever returned to their Native Country.

IN 1705, when *Nevis* was plunder'd and ruin'd by *Ibberville*, *New-England* charitably, and of their own accord rais'd 2000*l.* for their Relief; which they sent in two Vessels, each having 1000*l.* on board in Flower and Salt Provisions for their Subsistence, and in Materials for Rebuilding their Houses and Mills. This they did generously, neither desiring nor receiving any Returns, when that Island came into more prosperous Circumstances.

AND now lately, when *Carolina* was engag'd in a War with the *Spanish Indians*, and wanted Arms and Ammunition, they were supply'd with both from *Boston*.

UPON the whole, what a vast Fund of Merit have the Charter Governments rais'd to themselves from a long Series of Faithful and Heroick Services! And how strangely out of Countenance must this Objection look, that they have neglected the Defence of the Inhabitants!

I have only to wish, that His Majesty and His Ministry had leisure from the important Affairs of the Nation, and of *Europe*, to consider their Merit, and then I assure my self, instead of depriving them of their present Privileges, they would continue them forever ; and, if there were room for it, add as many more.

THE other Charge in the Bill is, *That they have exercis'd arbitrary Power.* If this be aim'd at the Proprietary Governments, which however I don't accuse, I have nothing to say, but am sure that the Charter Governments stand clear of it. The Thing speaks loudly for it self. For in the Governments where there are Charters, and those Charters entire, all Officers Civil and Military are elected by the People, and that annually ; than which Constitution nothing under Heaven can be a stronger Barrier against arbitrary Rule. For should it be allow'd, that the People, *corrupted* or *deceiv'd*, might instead of wise Magistrates chuse Tyrants and Oppressors to Lord over them one Year ; yet it can't be imagin'd, that after they have felt the Smart of it, they will do so the next. Nor can there be a greater Obligation on the Rulers themselves to administer Justice, than that their Election depends on it the next Year. Hence the frequent Choice of Magistrates has been ever a main Pillar, upon which all who have aim'd at Freedom in their Schemes of Government, have depended.

The 2d Charge in the Bill against the Charter Governments, that they have exercis'd arbitrary Power, answer'd.

As the Reason is incontestible, so the Fact is apparent, that these Governments, far from retrenching the Liberty of the Subject, have improv'd it in some important Articles, which the Circumstances of Things in *Great Britain* perhaps don't require, or won't easily admit.

To instance in a few ; There has been from the beginning an Office erected by Law in every County, where all Conveyances of Land are enter'd at large, after the Grantors have first acknowledg'd them before a Justice of Peace ; by which means much Fraud is prevented, no Person being able to sell his Estate twice, or take up more Money upon it than it's worth. Provision has likewise been made for the Security of the Life and Property of the Subject in the Matter of Juries, who are not return'd by the Sheriff of the County, but are chosen

chosen by the Inhabitants of the Town a convenient Time before the sitting of the Courts. And this Election is under the most exact Regulation, in order to prevent Corruption, so far as humane Prudence can do it. It must be noted, that Sheriffs in the Plantations are comparatively but little Officers, and therefore not to be trusted as here, where they are Men of ample Fortunes. And yet even here such flagrant Corruptions have been found in returning Juries by Sheriffs, that the House of Commons thought it necessary in their last Session, to amend the Law in this Point, and pass'd a Bill for choosing them by Ballot.

REDRESS in their Courts of Law is *easy, quick, and cheap*. All Processes are in *English*, and no special Pleadings or Demurrers are admitted, but the general Issue is always given, and special Matters brought in Evidence; which saves Time and Expence; and in this Case a Man is not liable to lose his Estate for a Defect in Form, nor is the Merit of the Cause made to depend on the Niceties of Clerkship. By a Law of the Country, no Writ may be abated for a circumstantial Error, such as a slight Mis-nomer or any Informality. And by another Law it is enacted, that every Attorney taking out a Writ from the Clerk's Office, shall indorse his Sirname upon it, and be liable to pay to the adverse Party his Costs and Charges in Case of Non-Prosecution or Discontinuance, or that the Plaintiff be nonsuit, or Judgment pass against him. And it is provided in the same Act, That if the Plaintiff shall suffer a Nonsuit by the Attorney's mis-laying the Action, he shall be oblig'd to draw a new Writ without a Fee, in case the Party shall see fit to revive the Suit. I can't but think that every Body, except Gentlemen of the long Robe and the Attornies, will think this a wholesome Law, and well calculated for the Benefit of the Subject. For the quicker Dispatch of Causes, Declarations are made Parts of the Writ, in which the Case is fully and particularly set forth. If it be Matter of Account, the Account is annex'd to the Writ, and Copies of both left with the Defendant; which being done fourteen Days before the Sitting of the Court, he is oblig'd to plead directly, and the Issue is then try'd. Whereas, by the Practice of the Court of *King's-Bench*, three or four Months Time is often lost after the Writ is serv'd, before the Cause can be brought to Issue.

NOR

NOR are the People of *New-England* oppress'd with the infinite Delays and Expence that attend the Proceedings in *Chancery*, where both Parties are often ruin'd by the Charge and Length of the Suit. But as in all other Countries, *England* only excepted, *Jus Et Æquum* are held the same, and never divided ; so it is there : A Power of *Chancery* being vested in the Judges of the Courts of Common Law as to some particular Cases, and they make equitable Constructions in others. I must add, that the Fees of Officers of all sorts are settled by Acts of Assembly at moderate Prices, for the Ease of the Subject.

It were easy to mention other Articles, but that I perswade my self it is needless. The Charter Governments are celebrated for their excellent Laws and mild Administration ; for the Security of Liberty and Property ; for the Encouragement of Vertue, and Suppression of Vice ; for the promoting Letters, by the erecting Free-Schools and Colleges ; and in one Word, for every Thing that can make a People happy and prosperous. To these Arts it is owing, that *New-England*, though she has attain'd but little more than the Age of a Man, with all the Disadvantages under which she labour'd in respect to her Trade and Climate, and almost a perpetual *Indian War*, has hitherto flourish'd far above any other of the Plantations.

THIS being the Case of the Charter Governments, let us turn the Tables, and see how it far'd with them when in an *evil Reign* they lost their Charters. Then the Governour of *New-England* with four or five Strangers of his Council, Men of desperate Fortunes, and bad if any Principles, made what Laws, and levy'd what Taxes they pleas'd on the People. They without an Assembly, rais'd a *Penny* in the *Pound* on all the Estates in the Country, and another *Penny* on all imported Goods, besides twenty *Pence per Head* as Poll Money, and an immoderate Excise on Wine, Rum, and other Liquors. Several worthy Persons, having in an humble Address represented this Proceeding as a Grievance, were committed to the common Goal for a high Misdemeanour ; deny'd the Benefit of the *Habeas Corpus Act* ; try'd out of their own County ; fin'd exorbitantly, and oblig'd to pay 160 *l.* for Fees, when the Prosecution would hardly have cost them so many Shillings in *Great-Britain*. And to compleat the Oppression, when they upon their Trial claim'd the Privi-

leges of *Englishmen*, they were scoffingly told, *Those Things would not follow them to the Ends of the Earth.* Unnatural Insult; must the brave Adventurer, who with the Hazard of his Life and Fortune, seeks out new Climates to enrich his Mother Country, be deny'd those common Rights, which his Countrymen enjoy at Home in Ease and Indolence? Is he to be made miserable, and a Slave by his own Acquisitions? Is the Labourer alone unworthy of his Hire, and shall they *only* reap, who have neither sow'd nor planted? Monstrous Absurdity! Horrid inverted Order!

THESE Proceedings, however arbitrary and oppressive, were but the Prelude: The Catastrophe was, if possible, yet more dismal. Having invaded their Liberties, by an easy Transition the next Attack was directly on their Properties. Their Titles to their Lands was absolutely deny'd by the Governour and his Creatures upon two Pretences: One, that their Conveyances were not according to the Law of *England*; the Other, that if they might be thought to have had something like a Title formerly, yet it now ceas'd by the Revocation of their Charters. So that they who had fairly purchas'd their Lands, and held them in quiet Possession for above fifty Years, were now oblig'd to accept new Deeds from the Governour, and pay for them a third part of their Value, in order to ascertain their Titles, or otherwise they would be seiz'd for the Crown.

It would be an Injury to Vertue, if I did not in this Place pay distinguish'd Honour to the Memory of an honest and worthy Patriot, Col. *Shrimpton* long since deceas'd, who being rich in Lands, was courted to receive new Patents *gratis*, that others might be drawn in by the Authority of his Example; but when he was appriz'd of their Design, he chose rather to have his Lands seiz'd (and they were seiz'd) than by such a base Compliance betray his Country-men into the Snares prepar'd for them. I should not have thus far enter'd into the Detail of Things so long past, but to shew from Experience, as well as from the Reason and Nature of the Thing, that Charters are not the *Causes* of arbitrary Government, but indeed *strong Works* rais'd against it, which once thrown down, Oppression rushes in like a Tide, and bears down every Thing before it.

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HAVING thus answer'd the Allegations of the Bill, in a Manner which I hope may be satisfactory, I am next to consider such Arguments as I have met with in Conversation from Persons in the Ministry and others.

WHAT I have heard most insisted on is, *That the Acts of Trade and Navigation, made on purpose to render the Plantations beneficial to Great-Britain, are disregarded in the Charter Governments ; and that this Evil cannot be effectually cur'd, but by a Resumption of the Charters.* To which I answer very particularly and distinctly,

The Third Objection, that the Acts of Trade are disregarded, answer'd.

First, THE Complaints on this Head are for the most Part of an old Date, and when the Bill against the Charters was depending in the House of Commons, were produc'd from the Files of the Plantation Board, whither they had been transmitted in former Reigns, when Custom-House Officers in the Plantations were such great Rarities, that one Collector serv'd four entire Provinces. And can it be thought strange that Merchants, whose Business is Gain, should have sometimes for Lucre transgress'd the Acts of Trade, when there were no Officers to see them duly observ'd ? The Case is vastly different now. Officers of the Revenue are multiply'd, and are extremely rigorous, so that instead of *their* Complaints of unfair Traders, the Merchants on the other Hand, greatly complain of the Oppression of the Officers. I've seen an Account of such intollerable Hardships impos'd on fair well-meaning Traders, under Colour of Law, that one would hardly give Credit to the least of the Articles, if the Whole had not been deliver'd publickly in an Assembly of one of the Provinces by a worthy Member, and afterwards printed with his Name to it. The Author I refer to, after a Recital of the several Facts, in which he is very full as to every Circumstance, draws up this melancholly Conclusion, That the Custom House Officers had by their violent Practices either seiz'd or driven away all the Vessels belonging to that Part of the Country, so that they had no Sloops left to carry their Produce to Market in the adjacent Colonies.

Secondly, If there be some *late* Complaints, perhaps upon Examination, they will appear to be ill-grounded. I can speak this know-

ingly, with Respect to a Complaint transmitted not long since by the Surveyor General of *North America*, and the Collector of *New-London*, against His Majesty's Colony of *Connecticut*. These Gentlemen, one or both of them, drew up a Charge against that innocent and loyal Colony, in very severe Terms, as *setting the Laws of Trade and Navigation at the utmost Defiance*. Whereas, in Truth and in Fact, the Instances they produc'd of such Defiance, were clear Proofs of that Colony's Inclination to support the Laws of Trade, and their own Traffick ; and on the contrary, what the Custom-House Officers insisted on, was manifestly subversive of both, and could serve no End in the World, but enhancing the Collectors Fees. The Case is this : There are on the Coast of His Majesty's Colony of *Connecticut*, eight convenient Ports or Harbours for Shipping. The Government there did, from the Beginning, place a Naval Officer in each of them, to see that the several Acts of Trade were duly observ'd. After the Act of the 7th and 8th of King WILLIAM, the Collector of the Colony appointed a Deputy in each of these Ports, who requir'd all Masters of Vessels, Outward and Inward-Bound, to Enter and Clear with him, as well as with the Naval Officer, whether they had any Goods on Board, paying a Duty to the Crown, or not ; which they submitted to, tho' not oblig'd by Law, as Sir *William Thompson*, the late Solicitor General, has, upon a full and impartial State of the Case, given his Opinion. The present Collector, thinking it best to receive all the Fees himself, refuses to make any Deputations, or allow the Power of the Naval Officers to be sufficient in his Absence, but commands all Masters of Vessels whatsoever, to repair to the Port of his Residence, & there to Enter & Clear with him : By which Regulation Seven of the Eight Ports, are left open for illegal Traders, to the great Detriment of the Crown ; whilst with equal Injury to the Subject, Sloops sailing from one Town to another, or perhaps to a neighbouring Province, with no better a Cargo than a few Deals and Turnips, shall be oblig'd to go sometimes 120 Miles out of their Way, (which often happens to be further than the Port of Delivery,) to find the Collector. The Agent for the Colony has fully represented this Hardship to the Commissioners of the Customs, and shown the Injury that will be done to the King as well as the Subject by this Establishment ; but all in vain ; there is no Redress : And what puts one out of all Pa-

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tience, this very Case is cited as one Allegation among others to support the general Charge against the Charter Governments, that they carry on an illegal Commerce.

Thirdly, IF IT were true that some Persons did now and then concern themselves in an illegal Trade, can it be thought just or reasonable that the whole Community should suffer for their private Fault? No Body will say, that the Acts of Trade are perfectly observed in the Provinces immediately under the Crown, or in *Great Britain* it self. I believe there is no Corporation in the Kingdom, being a Sea-Port, wherein there are not at some Time or other contraband Goods imported, or other Goods clandestinely run, to the Prejudice of the King's Duties. In this Port of *London* great Abuses are daily committed, in spite of the utmost Vigilance to prevent them. The Fraud of re-landing Callicoos after a pretended Exportation, only to receive the Drawback, is a most flagrant Instance, if one either considers the Perjuries that attend it, or the immense Sums that are thereby rob'd from the Publick, or the vast Injuries that are done by it to the honest Linnen-Draper. And yet, whoever us'd this, or any other Cheat of the like Kind, as an Argument to disfranchise this ancient Corporation? The Rule of Law is, *Noxa Caput sequitur*; and it is agreeable to natural Justice that every Man should suffer for his own Transgression. On the other Part, if a corporate Body were to forfeit their Privileges for every private Person's Offence, they would be of no Value. A Charter so limited could not stand a Week, nor would be worth the Expence of the Great Seal.

Fourthly, I might still make a further Remark. If the Grievances complain'd of were not antiquated Stories, but subsisting at this Time; if they were fairly represented; and lastly, if it were equitable that the Crimes of Persons in a private Capacity should be expiated by the Publick, yet no Conclusion could be drawn from these Premises prejudicial to the Charters, because the dissolving them would be no Remedy in any Sort. The Reason is plain, that putting this Case, not only the Inspection of Trade, but the Prosecution, Trial, and Punishment of every Offender would rest in the same Hands, and be carry'd on in the same Manner as before.

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All the Officers of the Revenue are, *in the present State of Things*, appointed by the Crown ; all Breaches of the Acts of Trade, saving a single one excepted by Act of Parliament, are cognizable only in the Court of Admiralty, where the Judge and every inferiour Officer are created, either by Commissions under the Broad Seal, or by Warrants from the Lord High Admiral. The Laws of the Country are not pleaded in that Court, but Acts of Parliament, and where they are silent, the Civil and Maritime Laws take place. The Forms of Proceeding, were *they* of any Consequence, are regulated after the Manner of *Doctors Commons*. If then his Majesty should resume the Charters, nothing more could be done to preserve the Acts of Trade than is at present, and therefore how plausible soever this Pretext may appear at first Sight, it's plain upon a nearer View that there is no Weight in it.

I am appriz'd that the Judge of the Vice-Admiralty in *New-England*, has often complain'd home of the frequent Prohibitions serv'd on him from the Courts of Judicature there, which he says, *weaken and in a Manner suppress the Authority of that Court, and all the good Ends for which it was constituted*. But neither does this Matter in the least relate to the Charters, though there were Reason for the Complaint, as on the other Hand, I shall immediately show there is none. The Right of the Courts of Common Law within the Province of the *Massachusetts*, to restrain the Excesses of the Admiralty Jurisdiction, are not deriv'd from their Charter, but from subsequent Laws of the Province, confirm'd afterwards by the Crown ; which Power therefore, whether the Charters stand or fall, will remain unhurt, and still the same. But the Matter of this Complaint is wholly groundless, which I must particularly show, because a Handle has been taken from it to hurt *New-England* in its Charters. I therefore take Leave to say, That the Superiour Court of Judicature for the Province of the *Massachusetts-Bay*, has a legal Power to issue Prohibitions to the Court of Vice-Admiralty : That it is very fitting and necessary such a Power should be lodg'd in that Court : And, lastly, That the particular Cases wherein the Judges of that superiour Court have hitherto exercis'd this Power, were apparently without and beyond the Admiralty Jurisdiction.

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To begin with the Power it self: 'Tis founded on an Act of the Assembly pass'd in the 11th Year of King WILLIAM, and by him confirm'd, entitled, *An Act for establishing a superiour Court of Judicature, Court of Assize, and General Goal Delivery.* The Act after a Recital of several Powers vested in the Court, has this general Clause: *And the said Court is hereby vested with the same Power as fully and amply to all Intents and Purposes whatsoever, as the Courts of King's Bench, Common-Pleas and Exchequer within His Majesty's Kingdom of England have or ought to have.* By Consequence then, if the Court of King's-Bench has a Power to restrain the Court of Admiralty in England, this Court of Judicature must have the same in New-England.

THE Reasons for such a restraining Power are as strong in New-England as in Great-Britain. It has been ever boasted as the peculiar Privilege of an Englishman, and the grand Security of his Property to be try'd by his Country and the Laws of the Land; Whereas this Admiralty Method of Trial deprives him of both, as it puts his Estate in the Disposal of a single Person, and makes the civil Law the Rule of Judgment; which tho' it may not perhaps properly be call'd Foreign, being the Law of Nations, yet 'tis what he has not consented to himself, or his Representative for him. A Jurisdiction therefore so founded ought not to extend beyond what Necessity requires, that is, to nothing but what is really transacted on the high Seas, which not being *infra Corpus Comitatus*, is not triable at common Law. If some Bounds are not set to the Jurisdiction of the Admiralty, beyond which it shall not pass, it may in Time, like the Element to which it ought to be confin'd, grow outrageous and overflow the Banks of all the other Courts of Justice. This Danger is still greater in the Plantations, where neither the Judge nor any of the inferiour Officers of the Admiralty have Salaries, or perhaps other Dependance than upon what they get by their Fees, and therefore must be strongly tempted to receive all Business that comes before them, however improper for their Cognizance.

IN vain do the Advocates for the Admiralty urge on this Occasion that an Appeal lies Home, and therefore if a Cause try'd there be found

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found to be *Coram non Judice*, Justice will be done to the injur'd Party on the Appeal. For if this Argument has any Force, it would take Place in *England*, because an Appeal lies here from the Sentences of the Admiralty, to the Court of Delegates, and yet that is not thought a sufficient Reason to prevent the Court of *Kings-Bench* from granting Prohibitions when they think them necessary. Besides it is to be remark'd, that the Appeal does not lie to the King and Council as it does from other Courts, but to the Judge of the Admiralty, and therefore one may imagine that the Appellant will have but a cold Cause of it ; for I believe it has been rarely found that any Court was forward to limit its own Power.

If then the Court of Judicature in *New-England* has a Right in general to award Prohibitions against the Court of Vice-Admiralty, there will, I believe be no Dispute as to the particular Instances wherein they have exercis'd this Power. Hitherto there have been but Three ; nor did the Judges come into these, but upon solemn Argument first had before them by the ablest Lawyers on the Spot. Not that I suppose there was any real Difficulty, but it being a Case *prima Impressionis* in that Country, 'twas thought proper to proceed so deliberately.

ONE Prohibition was granted on a Libel fil'd upon the Wool Act of the 10th and 11th of WILLIAM III^d. which provides, That all Offences therein mention'd, shall be try'd in some Court of Record, which 'tis certain the Court of Admiralty is not. Another was issu'd to stop Proceedings in a Cause which had been try'd before at common Law, and receiv'd the Judgment of the Court. If the Court of Vice-Admiralty should assume such a Prerogative as this, instead of being confin'd to maritime Affairs, it would be the supreme Court in all Causes, and the *dernier Resort* of Justice. The third Prohibition was upon a Charter-Party made and executed upon the Land, with a Penalty under Hand and Seal, which nevertheless was libel'd in the Court of Admiralty, and the Judge would very gravely have heard and determin'd it, on Colour of its having Relation to a Voyage, or at least to something which was to be perform'd on the Seas. Altho' this is so far from being a good Reason, that there are many Cases in the Books, where a Cause has been *wholly Maritime*, and even the Contract made upon the high Seas, yet because it was reduc'd

duc'd to Writing afterwards, and seal'd on the Shore, it has been adjudg'd to be without the Admiralty Jurisdiction. My Lord Coke is so clear and full upon this Subject, and the Limits of the Admiralty Jurisdiction are so exactly describ'd in the several Acts of Parliament made for this End, to say nothing of the Cases in the Books, where great Damages are given for infringing the Rights of the common Law, that I shall refer to them * and pursue this Argument no further.

ANOTHER Thing alledg'd against the American Charters is, *That their Governments have made Laws repugnant to the Laws of Great-Britain, contrary to the Powers given them, and thereby have incurr'd a Forfeiture of the Charters.*

The fourth Objection, *That they have made Laws repugnant to the Laws of Great-Britain, answer'd.*

IF the *Massachusetts* Charter were singly in Question, this Allegation would have no Place, because no Act pass'd by that Assembly has the Force of a Law 'till the King's Governour has assented to it, and then it comes Home for his Majesty's Approbation, who, if he pleases, annuls it. There is therefore no Danger of their making Laws repugnant to the Laws of *Great-Britain*; or if they should, there being a Remedy always at Hand, if it be not made use of, the Fault will lie somewhere else, and can't affect the Province.

BUT let us examine a little, whether any of the other Governments acting under Charters may deserve this Censure; in order to which, we must consider what this Phrase [REPUGNANT TO THE

* Vid. My Lord Coke's fourth Institutes, as also the several Statutes of 13 R. 2. Cap. 5. 15 R. 2. Cap. 3. By the Statute of the 2d of H. 4. Cap. 11. in case a Matter tryable at common Law be brought into the Court of Admiralty, the Party griev'd shall recover double Damages. See the Statute of the 27th of ELIZ. Cap. 11, as also the Cases in the Books, particularly that of Sir Josiah Child and Sands in Salk. 31. 2. where an Action was brought on the Statutes of 13 R. 2. 15 R. 2. and 2 H. 4. for arresting a Ship by Admiralty Process, the Matter not being within the Connusance of that Court, and tho' there was no Suit, nor any Plaintiff or Defendant, yet it was held to be a Prosecution, and double Damages were recover'd, Error was afterwards bro't, and the Judgment affirm'd.

LAWs OF ENGLAND] imports. I believe it will be easily allow'd, that a Law may be *various* from the Laws of *England*, and yet not *repugnant* to them; or otherwise these Governments must make no Laws at all, which no Body will say, who knows that a Right of Legislature is the most essential Part of their Charters, and what indeed the Reason and Nature of the Thing make absolutely necessary. Every Country has Circumstances peculiar to itself in respect of it's Soil, Situation, Inhabitants, and Commerce, to all which convenient Laws must with the nicest Care and Judgment be adapted; whereas the Laws of *England* are calculated for their own Meridian, and are many of them no ways suitable to the Plantations, and others not possible to be executed there.

THIS Point, however clear and evident, has not been always rightly understood. There was a pretty extraordinary Instance of it a few Years since, with respect to a Law in force in *Carolina* for choosing Jury-men by Ballot. This was part of their original Body of Laws, fram'd by the famous Earl of *Shaftsbury*, and what they had found by Experience a great Preservative to their Liberties and Properties. Yet I don't know how it happen'd, the Lord Palatine and other Lords proprietors of that Province, imagining this Law to be repugnant to the Laws of *Great-Britain*, and that they should thereby incur a Forfeiture of their Charter, directed their Landgraves to get it repeal'd. The People in that Government, unwilling to part with what they so much esteem'd, sent over two Deputies express to set the Matter in a fair Light before their Lordships. When they arriv'd, I accompany'd them at their Desires to the Board, where after some Debates, we satisfy'd their Lordships that their Charter could be in no Danger on this Account, and that one Law might be various from another without being repugnant to it.

HAVING premis'd this Distinction, I answer the Question in direct Terms, That *then a Law in the Plantations may be said to be repugnant to a Law made in Great-Britain, when it flatly contradicts it, so far as the Law made here mentions and relates to the Plantation. Contraria sunt ad idem*: And therefore one Thing cannot be said to be contrary to another, that does not immediately relate to it, and diametrically oppose it. For the Purpose, if a Law pass'd here has its

Force

Force restrain'd to *England, Wales*, and the Town of *Berwick* on the *Tweed*, no Law in the Plantations can properly be said to repugn it ; because whatever Diversity there may be between them, yet one having no Manner of Relation to the other, they are not repugnant. I believe I am right in my Logick, but am sure I am as to the legal Acceptation of the Phrase, because what I advance is founded on the Words of an Act of Parliament. It is the 7th and 8th of King WILLIAM, which (Cap. 22. Sect. 9th) Enacts, *That all Laws, By-Laws, Usages, or Customs at this Time, or which hereafter shall be in Practice, or endeavoured or pretended to be in Force or Practice in any of the Plantations, which are in any wise repugnant to the before-mention'd Laws or any of them, SO FAR AS THEY DO RELATE TO THE SAID PLANTATIONS, OR ANY OF THEM, or which are any ways repugnant to this present Act, or any other Law hereafter to be made in this Kingdom, SO FAR AS SUCH LAW SHALL RELATE TO AND MENTION THE SAID PLANTATIONS, are illegal, null, and void, to all Intents and Purposes whatsoever.* If then we'll take the Sense of the Phrase from an Act of Parliament, (and where can we have a better Expofitor ?) no Man will pretend that there ever was a Law made in the Plantations repugnant to the Laws of *Great-Britain*. And yet I am apt to think that if an Assembly should do a Thing so illegal, they ought to be punish'd for it themselves, and not their Constituents. They were chosen and delegated by the People to frame Laws according to the Powers given them by their respective Charters, which if they exceed, why should a whole Country suffer for their Offence ? This would be to punish the Innocent for the Guilty, and is not agreeable to the Law in other Cases, where if the Trustee does any Act that is illegal and beyond his Trust, the *cestuy q Trust* is not obliged by it, nor to be hurt for it.

If the Words will receive any other Construction than what the Act of Parliament has put upon them, I think it must be suppos'd to be this ; that the Patentees should not under Colour of their particular Charters, presume to make any Laws inconsistent with the great Charter and other Laws of *England*, by which the Lives, Liberties, and Properties of *Englishmen* are secur'd. It seems reasonable eno' to think that the Crown might intend by this Injunction to provide

for all it's Subjects, that they might not be oppress'd by arbitrary Power ; but in whatever distant part of the World they were settled, being still Subjects, they should have the Usage of *Englishmen*, be protected by the same mild Laws, and enjoy the same happy Government, as if they continued within the Realm. Consider the Expression in this Light, and the Colonies (which I am defending) are still safe, having in no respect impair'd, but many Ways improv'd the Liberty of the Subject, as I have before shewn under another Head. If hereafter so unaccountable a Thing should happen, that those Privileges which were design'd as Fences against Oppression and despotick Power prove the Means to introduce both, and the Body of the People should petition to be reliev'd from the Yoke of their Charters, for my part, I'll be no longer an Advocate for them. Only in the mean Time, I heartily wish they may not be disturb'd, but rest in Peace, 'till then.

A 5th Objection, That the Charter Colonies will grow great and formidable, answered.

THERE is one Thing more I have heard often urg'd against the Charter Colonies, and indeed 'tis what one meets with from People of all Conditions and Qualities, tho', with due

Respect to their better Judgments, I can see neither Reason nor Colour for it. 'Tis said, *That their encreasing Numbers and Wealth, join'd to their great Distance from Britain, will give them an Opportunity in the Course of some Years, to throw off their Dependance on the Nation, and declare themselves a free State, if not curb'd in Time, by being made entirely subject to the Crown.* Whereas, in Truth, there's no Body, tho' but little acquainted with these or any of the *Northern Plantations*, who does not know and confess, that their Poverty, and the declining State of their Trade, is so great at present, that there's far more Danger of their sinking, without some extraordinary Support from the Crown, than of their ever revolting from it. So that I may say, without being ludicrous, that it would not be more absurd to place two of His Majesty's Beef-Eaters to watch an Infant in the Cradle, that it don't rise and cut its Father's Throat, than to guard these weak infant Colonies, to prevent their shaking off the *British Yoke*. Besides, they are so distinct from one another in their Forms of

of Government, in their religious Rites, in their Emulation of Trade, and consequently in their Affections, that they can never be suppos'd to unite in so dangerous an Enterprize. It is for this Reason I have often wondered to hear some great Men profess their Belief of the Feasibleness of it, and the Probability of its some Time or other actually coming to pass, who yet with the same Breath advise, that all the Governments on the Continent be form'd into one, by being brought under one Vice-Roy, and into one Assembly. For surely if we in Earnest believ'd that there was or would be hereafter, a Disposition in the Provinces to rebel, and declare themselves independent, it would be good Policy to keep them disunited; because if it were possible they could contrive so wild and rash an Undertaking, yet they would not be hardly enough to put it in Execution, unless they could first strengthen themselves by a Confederacy of all the Parts.

BUT to return from this short Digression: Our Neighbours of *Holland*, who are allow'd to be a wise State, did not entertain these Jealousies of their Subjects in *India*, when they were a young and growing Plantation, nor do they even now when they are a potent flourishing People. Had they done so, and in Consequence of it restrain'd and check'd them, *Holland* would not at this Day have drawn such immense Riches from that Part of the World, and furnish'd all *Europe* with *Indian* Commodities. And yet what Reason can be assign'd for the Jealousies we entertain of our Colonies, which the *Dutch* have not, and far stronger with Respect to their *Batavian* Subjects? If the Distance be urg'd as an Argument, every Body knows that *New-England* is but a thousand Leagues from the *British* Shore, but the *Dutch* must run eight Times that Ground from *Amsterdam* before they arrive at *Batavia*. Or if the Number and Power of the Inhabitants should give any Umbrage, this is an Article which, with Respect to *Batavia*, won't admit of the most distant Comparison. The General of that Place maintains a Port superiour to many Sovereign Princes in *Europe*, and has all the Kings in *Java* in a Manner Tributary to him. He has 3000 standing *European* Troops, not reckoning the Natives; and all the *Dutch* Inhabitants live in that flowing Wealth and Plenty, which makes
Batavia

Batavia look like the Capital of a great and mighty Empire. But do the States of *Holland* look on this their prosperous Condition with envious or jealous Eyes? Just the Reverse; they do every Thing in their Power still to promote and advance it, well knowing their foreign Plantations can't thrive, but they must receive the Benefit of it themselves, and therefore justly esteem the Wealth of their Subjects abroad as their own Riches. Why then should not *Great Britain* form the same Judgment, and proceed by the like Measures in Regard to her *American* Dominions, from whence she receives the greatest Advantages? It were no difficult Task to prove that *London* has risen out of the Plantations, and not out of *England*. 'Tis to them we owe our vast Fleets of Merchant Ships, and consequently the Increase of our Seamen, and Improvement of our Navigation. 'Tis their Tobacco, Sugar, Fish, Oil, Logwood, and other Commodities, which have enabled us to support our Trade in *Europe*, to bring the Ballance of some Countries in our Favour, which would otherwise be against us, and to make the Figure we do at present, and have done for near a Century past, in all Parts of the commercial World.

THE Mother Kingdom must therefore needs rejoice in the Prosperity of every one of her Colonies, because it is her own Prosperity. The Fable of the Belly and Members illustrates this Argument. It would be unreasonable for the Belly to grudge the Labour of digesting the Food, and dispersing the Blood and Juices to the extream Parts, seeing they return purify'd and exalted in the Circulation. There's a close Analogy between the Natural Body and the Body Politick; as in the one, a Finger can't ake, but the Whole feels it, so in the other, the remotest Plantation can't decay, but the Nation must suffer with it.

If it be said that the Charter Colonies are not so valuable as some of the rest, I answer, that the Inhabitants have the more Need of their Charters to make them amends; for People must have some Encouragement to sit down on a cold and barren Soil. Yet I have shewn before, that they are many Ways of great Use and

and Advantage to the Crown ; to which I add, that they will be more so than ever in a few Years, to strengthen the *British* Empire in *America* against the formidable Settlement of *Loisiana*, which for some Years past has been carry'd on by the *French* with great Expence, and with the utmost Vigour and Application. This Country was given by the late *French* King to the *Sieur Croizat*, but is now (as every Body knows) in the famous *Mississippi* Company, who have a Fund of an Hundred Millions of Livres for this very Purpose, and are daily sending over a vast Number of People for Tillage, as well as all Sorts of Artificers, with proper Materials for making a Settlement. It is situate on the great River of *Mississippi*, and by Help of the superiour Lakes and Rivers, on some of which the *French* have already erected Fortresses, a Communication may be made between *New-France* and the Gulph of *Mexico*, which indeed was the very Scheme of the *French* Court in projecting this Enterprize, as is expressly declar'd in the Preamble to *Croizat's* Patent. 'Tis easy then to see, that the *French* will be hereby enabled to draw a Line, and in Time have a Chain of Towns on the Back of all our Colonies, from the Borders of *Cape Breton* to the Westermost Part of *Carolina*. And what *Briton* can consider this, without being in Pain for the Fate of our Provinces in future Times ? Especially since we know that the *Minois*, and other warlike *Indian* Nations, lye near the *French*, and for many Reasons, which it would be too much a Digression to recount here, are devoted to their Interest, and by Consequence ready at all Times to join their Forces in any Attempt against us.

THIS being the Case, I think, with humble Submission, it is very preposterous to amuse our selves with vain, maginary Prospects of what is scarce possible to come to pass, and neglect doing what is absolutely necessary ; I mean, the enlarging and supporting our Provinces, that they may be able to defend themselves against being one Day totally extirpated by a foreign Power. And then I have only to suggest an old approved Maxim, *That every Thing is best preserved by the same Principles by which it was at first form'd*, and consequently the best Method of encouraging the *Charter* Colonies is, to preserve their Privileges inviolate, without which they had never been settled.

ANOTHER

*The 3d Proposition,
That it is not the Interest of the Crown to
resume the Charters if
forfeited.*

ANOTHER Proposition I advanced
was, That if these Governments should
be adjudged to have forfeited their Charters
back to the Crown, yet it is not the
true Interest of the Crown to resume
them.

It is a generally receiv'd Opinion, That the People in the Plantations have an Interest distinct from that of the Crown ; when it is suppos'd at the same Time, that the Interest of the Governours, they being the King's Representatives, is one with the Crown ; and from these Premises it is concluded, that there can't be too much Power given to the Governours, or too little to the People. Whereas, with humble Submission, I conceive this to be a very wrong Judgment, and that the Reverse of it is true. The only Interest of the People is to thrive and flourish in their Trade, which is the true Interest of the Crown and Nation, because they reap the Profit of it. When on the other Hand, the View that Governours generally have is private Gain, which being too often acquir'd by discouraging and oppressing Trade, it is not only an Interest distinct from that of the Crown, but extremely prejudicial to it. The Trade of a young Plantation is like a tender Plant, and should be cherish'd with the fondest Care ; but if instead of that, it meets with the rough Hand of Oppression, it will soon die. The proper Nursery for this Plant is a free Government, where the Laws are sacred, Property secure, and Justice not only impartially, but expeditiously distributed. For to what Purpose shall the Merchant expose his Estate to the Dangers of the Sea, the Enemy, and many more Accidents, if after all he can't save it at Home from Rapine and Violence ?

As this is evident, so is it that whatever injures the Trade of the Plantations, must in Proportion affect *Great Britain*, the Source and Center of Commerce ; from whence they have their Manufactures, whither they make their Returns, and where all their Superlucration is lodg'd. The Blow then may strike the Colonies first, but it comes Home at last, and falls heaviest on our selves.

THAT

THAT Governours are apt to abuse their Power, and grow rich by Oppression, Experience shows us. We have seen, not many Years since, some Governours seiz'd by their injur'd People, and sent Prisoners to *Whitehall*, there to answer for their Offences. Others have fallen Victims on the Spot, not to the Fury of a Faction or a Rabble, but to the Resentment of the whole Body of the People, rising as one Man to revenge their Wrongs. Others, after being recall'd, have been prosecuted at the *King's-Bench Bar*, pursuant to an Act of Parliament made in the Reign of the late King WILLIAM, whereby it is provided, That Governours shall be impleadable at Home for any Injuries done in their Governments Abroad. We have had more than one flagrant Instance of this very lately, where Governours have been convicted and censur'd, not so properly for oppressing, as for a direct plundering the People, and such other Acts of Misrule and lawless Power, as one would not have thought it possible they should have committed, if Experience had not shown it to be more than possible.

I DON'T however intend, by what is here said, to reproach our own Nation, as if we were greater Sinners than others, or to reflect on the present Times, as if they were worse than the former. I know that the same Abuses have been practis'd in every Age as well as this, and in foreign Colonies as well as our own. The ancient *Romans* were as brave and as vertuous a People as any in the World, and yet their Proconsuls or Governours were very Guilty in this Respect. Their Corruption was so notorious as to be distinguish'd by the Name of *Crimen Repetundarum*, a Phrase not us'd in any other Meaning, and deriv'd from the Obligation which the *Roman* Senate laid on their Governours to make Restitution.

NOR have the modern Governours in the *French* and *Spanish* Plantations been less Criminal. It's a famous Story of a Great Minister at the Court of *Madrid*, who writ to his Friend the Vice-Roy of *Peru*, that great Complaints were made against him, for having extorted immense Sums of Money from the People in his Government; *Which*, says he, *I wish may be true, or else you are undone.* It seems the same Thing that wounded him was necessary

to heal him ; and what put him out of Favour, was the only Thing could restore him.

INDEED it can hardly be expected, but these Corruptions must happen, when one considers, that few Gentlemen will cross the Seas for a Government, whose Circumstances are not a little Streight at Home, and that they know by how slight and uncertain a Tenure they hold their Commissions ; from whence they wisely conclude, that no Time is to be lost. And then for the Account to be rendered at Home, that is not thought of at so great a Distance, for *Procul a Jove, procul a Fulmine.*

To enlarge then the Power of Governours, is to give them greater Power to oppress ; and to vacate the Charter is to enlarge their Power, the Government in that Case, of Course devolving upon them ; as we see in those Colonies which never had any Charters, but are immediately dependent on the Crown. There they have, in a Manner, the entire legislative and executive Powers, or at least so great an Influence on the constituent Parts of the former, as leaves them little more than nominal Sharers, serving rather as Screens to the Governour than a Defence to the People. The Militia is absolutely vested in the Governours, which influences all Elections of Representatives : They appoint Judges, Justices, Sheriffs and other civil Officers, with the Consent, it's said indeed, of the Council ; but that such Consent voluntary or involuntary, will ever be refus'd, seems too much to be expected, if we consider, that tho' the Governours do not indeed appoint the Council, yet they recommend proper Persons to the King ; and it may be supposed, that a Gentleman who is intrusted with the chief Command of a Province, and is actually on the Spot, will be thought the best Judge who are fit to serve, and therefore his Recommendations will almost always prevail. Besides, if there be a Turn to serve, or an Emergency, real or imaginary, and any of the Members should be so refractory as not to give into his Measures with an implicit Faith, the Governour can suspend as many of them as he pleases ; and when he has reduc'd the Board, under a Number limited in his Instructions, he can then fill it up to that Number *instantly* with whom he pleases ; and who will they be, may we presume, but such as are passively obedient to his

his Will ? And too many such there are to be found in all Colonies so constituted, who are content to be *saddled* themselves, provided they may *ride* others under the *chief Rider*. I must farther observe, that where there are no Charters, there are Courts of Equity establish'd, in which the Governour is always Chancellor, and for the most Part Chief Justice, and Ordinary at the same Time ; which puts the Estate, Lives, and Liberties of the Inhabitants, saving the Liberty of Appeal at Home, entirely in his Disposal ; and even an Appeal in all Cases under a considerable Sum, in all Cases of the ordinary Jurisdiction, and in all Cases Capital, is either disallow'd by his Instructions, or wholly in the Governour's Breast to allow or not.

THE Sum of my Argument is, That the Benefit which *Great Britain* receives from the Plantations arises from their Commerce : That Oppression is the most opposite Thing in the World to Commerce, and the most destructive Enemy it can have : That Governours have, in all Times, and in all Countries, been too much inclin'd to oppress : And, consequently, it cannot be the Interest of the Nation to encrease their Power, and Lessen the Liberties of the People. I am so sanguine in this Opinion, that I really think it would be for the Service of the Crown and Nation to incorporate those Governments which have no Charters, rather than Disfranchise those that have.

THE last Thing I propos'd to consider was, How far it may be consistent with Justice, to deprive the Colonies of their Charters, without giving them a fair Trial, or any previous Notice.

The 4th Proposition, That it seems inconsistent with Justice to Disfranchise the Charter Colonies by an Act of Parliament.

It is certain, that Bills of Attainder, such as this would be, have been seldom us'd in *England*, and then only upon the most extraordinary Occasions : As when flagrant Crimes have been committed of a new and unusual Nature, against which the Law had made no Provision ; or when the Witnesses have avoided, and perhaps by the Contrivance of the Party ; or lastly, which is the most common

Case, when the attainted Person having himself absconded, and fled from Justice, has thereby made such an extrajudicial Proceeding justifiable. It is also as certain, that neither of these Things can be pleaded in the present Case, which I need not be particular in showing, because not suggested, nor is there the least Colour for such a Suggestion. And yet I pretend to know the People in the Charter Governments so well, and to be so thoroughly acquainted with their meek Principles of Obedience, that I dare affirm, if such an Act should pass, however rigorous and severe they might think it within themselves, they would not let fall an indecent Word of their Superiours, but would receive the News with the lowest Submission : So great is their Loyalty to the King, and so profound their Regard for the Resolutions of a *British* Parliament, the wisest and most august Assembly in the World. However, seeing there is no such Act already pass'd, and 'tis to be hop'd, from the Honour and Justice of Parliaments, never will, it can't be thought a Crime modestly to State the Hardship of the Case : I don't mean with Respect to the Merits of it, which have been already consider'd, but as to the *Manner of Proceeding by Bill in Parliament*. It is a most sacred and unalterable Rule of Justice, and has ever been so esteem'd by all the civiliz'd Nations of the World, that no Person be depriv'd of Life, Liberty or Estate, or any Thing he possesses, 'till he has had Time and Opportunity to make his Defence. And if the Matter in Judgment be of great Value, dearly paid for, and long enjoy'd, it adds much to the Weight of the Argument, and aggravates the Injury in depriving the Possessors unheard. Now this is the Case of the Charter Governments. How great the Purchase-Consideration was, has been before said ; but how valuable the Charters themselves are, can never be said, Liberty being estimable. And for the Time they have enjoy'd them, were they not on Record, it would be what the Civillians call *Immemorial*, one of them being above Four-score Years standing. It seems therefore a Severity without a Precedent, that a People, who have the Misfortune of being a Thousand Leagues distant from their Sovereign, a Misfortune great eno' in it self, should UNSUMMON'D, UNHEARD, IN ONE DAY be depriv'd of all their valuable Privileges, which they and their Fathers have enjoy'd for near a hundred Years. It's true, the legislative

Power

Power is absolute and unaccountable, and King, Lords and Commons may do what they please ; but the Question here is not about *Power*, but *Right* : *And shall not the Supreme Judicature of all the Nation do right ?* One may say, that what the Parliament can't do justly, they can't do at all. *In Maximis minima est licentia*. The higher the Power is, the greater Caution is to be us'd in the Execution of it, because the Sufferer is helpless and without Resort.

WHEN in an arbitrary Reign, the Charter of *New-England* was vacated, a *Quo Warrant* first gave the Colony Notice to prepare for their Trial. Altho' this was a Prosecution at Law, and the high Court of Parliament is not strictly confin'd to the Forms of the Courts below, yet it is not doubted but the great Fountain of Law and Justice will have some Regard, if not to all the Rules made for inferiour Judicatures, yet to such as are essential to Justice. And so in other Cases it has. For the Purpose : If a Bill be brought into the House of Commons that touches any Man's Property in *Ireland*, it must lie thirty Days, that the Party may have Notice, and not suffer unheard. Why then should not a reasonable Time be allow'd to the Subjects in *America*, in Proportion to their more distant Situation ; seeing they are no less the Subjects of the Crown, than the Inhabitants of *Ireland* ; and Liberty is at least as valuable as Property ; and surely the Concern of whole Provinces challenges as much Regard as the Interest of a single Person. If it should be said, as I confess a great Minister once said to me, That *the Regulation of Charters must be look'd on as Part of the publick Oeconomy, and not as the Affair of any particular Person or Province* ; I humbly apprehend, with the utmost Deference to that great Person, that this does not reach the present Case. It's indeed very reasonable that all publick Affairs be subject to the Determination of the publick Wisdom, and there's no Occasion to notify any Body, because every Body is suppos'd to be present in the representative Body of the Whole ; but here the Provinces to be censur'd and depriv'd have no Representative in Parliament, and consequently must be consider'd as absent Persons suffering unheard.

I KNOW of but one Thing more that can be said to palliate a Proceeding against the Charters in this Way, which is, *That the Provinces*
always

always have their respective Agents at Court, who may be heard by Petition before the Bill passes into an Act. To which I answer, *First*, That sometimes they have Agents here, and at other Times they have not. Next, That a Bill may pass into an Act without the Knowledge of the Agents, they having no Citation. This had once like to have been the Case, when a Bill of this Nature was formerly brought into the House of Commons; and certainly had prov'd so, if the Agent for *New-England* had at that nice Juncture been indisposed in his Health, or but a Day's Journey out of Town, or if he had not been more than ordinarily active and diligent when he was in Town. And lastly, I must observe that Agents are only instructed in Things that fall within the ordinary Course of Business, and when any Thing of a new and extraordinary Nature is brought on the Carpet, they have a general Instruction to pray for Time in order to notify their Principals, and receive their special Commands. Besides, it's well known that the Right Honourable the Lords Commissioners for Trade and Plantations were, at the Time before-mentioned, prepared to urge many Complaints both new and old; to which Facts it had been impossible for any Agent to answer *ore tenus*, without being ever appriz'd of them.

To conclude, What *these Governments* desire of their Superiours at Home is, That they may not be judg'd and condemn'd unheard. And I cannot but flatter my self they will obtain it, whether I consider the Reasonableness of the Demand it self, or the celebrated Justice and Lenity of His Majesty's Government; or the Importance of the Thing in Question to the Provinces concern'd. I mention this last Particular, being sure they would reckon the Loss of their Privileges a greater Calamity, than if their Houses were all in Flames at once. Nor can they be justly blam'd, the one being a repairable Evil, but the other irreparable. Burnt Houses may rise again out of their Ashes, and even more beautiful than before, but 'tis to be fear'd that Liberty once lost, is lost for ever.

THUS I have ventur'd into the World my Thoughts on the *New-England* Charters; happy! if my imperfect Essay may provoke some learned Pen to do full Justice to the Subject, which yet in the great
Scarcity

Scarcity of Friends that these Governments have, seems too much to be expected. In the mean Time, being my self a Native of one of them, I could not forbear showing my Good-will; for how little soever one is able to write, yet when the Liberties of one's Country are threaten'd, it's still more difficult to be silent. The dumb Son of Croesus, when he saw an Attempt made on his Father's Life, broke into a sudden Speech by a strong Effort of Nature. It's a fine Passage in Sallust, which I've plac'd in the Title-page of this little Work, *Pulchrum est Patriae benefacere, etiam benedecere haud absurdum est*. Every Man would be ambitious to do his Country each of these Services, and if I have not been fortunate enough to attain to either of 'em, THIS shall be my Satisfaction, that I have always aim'd and endeavour'd at both